

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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APOLLO HEALTHCARE CORP. d/b/a
APOLLO HEALTH AND BEAUTY CARE,

ESDC SDNY
DOCUMENT
ELECTRONICALLY FILED
C #: <u>21624</u>

Plaintiff,

22 Civ. 7719 (LLS)

ORDER

- against -

SOL DE JANEIRO USA INC. and
SOL DE JANEIRO IP, INC.,

Defendants.

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The December 15, 2023 Order (Dkt. No. 94) noting "Apollo's unbridled discovery demands in the past, and that the time for fact discovery in this case expired two months ago," required that Apollo's present demands be itemized and individually supported.

Apollo's December 22, 2023 Response (Dkt. No. 97) repeats its reasons "to believe that additional documents relating to SDJ's design file and the creation and adoption of the alleged trade dress and trademark exist but have not been produced." Id. at 2.

As before, the core of its belief is the fact that "only four documents relating to the creation of the alleged trade dress" have been produced. Id. at 3-4.

Sol de Janeiro's January 4, 2024 Response (Dkt. No. 103) details the extent of the knowledge of the deposition witnesses,

and the series of searches conducted, explaining the non-availability of contemporary documents disposed of in transition to a different system in 2020. In any event, the point remains that Apollo has not been able to meet the requirements of the December 15 Order.

* * *

It is time to recognize that the discovery process is closed.

If Apollo can make out a case of spoliation (based on affirmative facts, not inferences and suspicion), it may be put before the jury, which will be charged accordingly.

Motion denied.

So Ordered.

Dated: New York, New York
February 16, 2024

Louis L. Stanton
LOUIS L. STANTON
U.S.D.J.